

The Honorable Thomas T. Glover  
Chapter: 11  
Hearing Location: Seattle  
Hearing Date: January 9, 2009  
Hearing Time: 9:30 a.m.  
Response Date: December 30, 2008

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re:

GEN CON LLC,

Debtor.

Case No. 08-10844-TTG

**OBJECTION TO THE CONFIRMATION  
OF THE DEBTORS AMENDED PLAN  
OF ORGANIZATION**

Comes Now Gen Con Acquisition LLC, a Delaware limited liability corporation ("Acquisition"), potential purchaser of the above captioned debtor's ("Debtor") assets and creditor by purchase of the claim of LGC Associates LLC (Claim No. 6) (See Docket No. 122, Notice of Transfer of Claim) and files this Objection ("Objection") to the Confirmation of the Debtor's Amended Plan of Reorganization ("Plan"). In Support of this Objection, Acquisition states as follows:

**I. INTRODUCTION**

1. Acquisition is an entity which since November of 2008 has attempted to enter into negotiations with the Debtor (see final form offer letter attached hereto as **Exhibit A**).<sup>1</sup> Acquisition has offered to acquire the Debtor's assets under a plan which:

<sup>1</sup> The Offer initially provided for new money rather than use of the debtor's operating funds to pay creditors and was improved over several weeks to offer a 70% instant payoff and a escrow deposit of \$900,000. No amount of improvement attracted negotiations from the committee or the debtor in possession.

OBJECTION TO CONFIRMATION – 1

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1           • Guarantees, by funds deposited by Acquisition in the undersigned's Escrow Account,  
2 the payment in full of all allowed administrative expenses and priority claims;

3           • Guarantees, by funds deposited by Acquisition in the undersigned's Escrow Account,  
4 the holders of all allowed unsecured claims the option of either an **immediate guaranteed**  
5 **payment of 70% of their claims** or a partially guaranteed payment, over time, of 100% of their  
6 claims plus interest (see attached Exhibit A);

7           • Provides for the retention of all operation capital currently in the Debtor to ensure  
8 funding of the future operations and conventions;

9           • Preserves of all of the Debtor's claims and causes of action ("Debtor Claims") against  
10 insiders and or associates and affiliates of insiders ("Insider Defendants") to further ensure  
11 payment of creditors' claims; and

12           • Waives Debtor Claims against third party trade vendors and other third party  
13 unsecured creditors who are not Insider Defendants.

14           2.       The Debtor has consistently refused to even discuss Acquisition offers and instead  
15 has continued to press its Plan which:

16           • Provides no new capital to the Debtor (Section 10.1 of the Plan);  
17           • Forces the Debtor to use its cash on hand to pay administrative and priority claims,  
18 greatly reducing needed operating capital (Section 10.4 of the Plan);

19           • **Fails to require that any payments be made to unsecured creditors**  
20 (Section 10,1.3; "If the Reorganized Debtor has insufficient funds on hand to make a scheduled  
21 payment, the disbursement amount may be reduced and the deficiency will be paid at the next  
22 payment ... in the event the Reorganized Debtor has insufficient funds available to make final  
23 payment on October 1, 2012, additional payments may be made on April 1 and October 1, 2013  
24 ... to complete the Plan.")

25           • **Releases insiders from claims and possible avoidance actions which could total**  
26 **approximately \$10,000,000** without any compensation, explanation or justification (Debtor's

OBJECTION TO CONFIRMATION – 2

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1 Statement of Financial Affairs [Docket No. 24] at Question 3c, payments to insiders; Question  
2 10, transfers outside the ordinary course of business; Question 14 setoffs).

3 • Has no default provisions which would require the Debtor to make any payments to  
4 unsecured creditors or would allow enforcement of the Plan except by stating the unsecured  
5 creditors would retain their contractual rights under the plan (Section 14 of the Plan).

6 3. Acquisition believes that the current Plan fails to maximize the value of the  
7 bankruptcy estate, as required by law. See Commodity Futures Trading Commission, 471 U.S.  
8 343, 352 (1985) (duty of debtor to maximize the value of the estate); In re General Teamsters,  
9 etc., 265 F.3d 869, 877 (9th Cir. 2001) (maximizing the value of the bankruptcy estate is a  
10 central purpose of the Bankruptcy Code); In re Pacific Gas and Electric Company, 304 B.R. 395,  
11 404 (Bkrty. N.D. Cal. 2004) (same). For this and for the other reasons set forth below is not  
12 confirmable under the provisions of the Bankruptcy Code.

### 13 **FACTUAL BACKGROUND**

14 4. The Debtor is an entity formed to run hobby gaming and other related  
15 conventions. It traces its origins to hobby game conventions which were first held 41 years ago  
16 in Wisconsin. Its primary source of income is from registrations and/or vendor booth fees for its  
17 convention.

18 5. In 2002, Peter Adkison (“Adkison”) acquired Gen Con from Hasbro’s Wizards of  
19 the Coast (“Wizards”) division. Until its 2001 acquisition by Hasbro, Adkison had served as  
20 Wizards’ CEO.

#### 21 **A. Adkison Insider Relationship with Debtors**

22 6. Adkison is also the chairman and CEO of Hidden City Games, which markets  
23 *Bella Sara*, a collectable card game and computer game for young girls. In November of 2007,  
24 Hidden City Games was funded with \$15,000,000 from Rustic Canyon Partners and Trinity  
25 Ventures. Information concerning Hidden City Games’s capitalization was withheld in the  
26 Debtor’s Disclosure Statement which instead described Hidden City Games as a “start up”.

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1           7.       Adkison is also an owner, with his former spouse, Melissa Reis,<sup>2</sup> of Off the Grid  
2 LLC. Off The Grid is apparently a company which provides specialty merchandise and has  
3 operated the Debtor's "store" for Debtor merchandise at its conventions.

4           8.       The Debtor Has Stated In Its Monthly Operating Reports That It Does Business  
5 With Both Off The Grid And Hidden City Games, but does not detail what goods or services  
6 either of these entities provide to the Debtor. Further, the Debtor does not explain the basis for  
7 the payments, setoffs and transfers made to them.

8           9.       As noted in the Debtor's disclosure statement, the Debtor has consistently lost  
9 money over the past several years of its operation (Docket No. 93).

10           **B.       2007 Financial Crisis**

11           10.       In May of 2007, Gen Con produced a convention for Star Wars fans called  
12 "Celebration IV" ("C IV"). The Debtors have stated that massive losses from this event was one  
13 of the causes of its bankruptcy.

14           11.       During C IV, the Debtor conducted a charity auction ("Auction") for the benefit  
15 of the Make-A-Wish Foundation ("Make-A-Wish") under an agreement with Lucas Films Ltd.  
16 ("Lucas") by which Lucas provided numerous items, including Star Wars memorabilia, to be  
17 auctioned for the benefit of Make-A-Wish.

18           12.       The Auction took place during the week of May 24, 2007 and raised  
19 approximately \$150,000 for Make-A-Wish from the sale of the Lucas items.

20           13.       The Debtor refused to pay the Auction proceeds to Make-A-Wish even though the  
21 proceeds were either Lucas' or Make-A-Wish's property until this Court's sua sponta order of  
22 November 28, 2008 directing the Debtor to turnover the auction Proceeds to Make-A-Wish  
23 (Docket No. 108)

24  
25  
26           <sup>2</sup> On information and belief, Adkison and Ms. Reis obtained their divorce during the pending of  
this bankruptcy case.

1           14.     During 2007, the Debtor grossed approximately \$7.3 million in revenue and lost  
2 approximately \$1.8 million. In addition to revenues from its operations in 2007, the Debtor  
3 obtained loans of \$500,000 from John W. Jordan (Claim No. 15), a vice president of Wizards  
4 under Adkison, \$200,000 from Tom Des Brisay (Claim No. 4) and \$125,000 from Hidden City  
5 Games (Claim No. 17). None of these funds were used to pay Make A Wish and there are no  
6 documents supporting the Hidden City Games claims attached to its Proof of Claim.

7           **C.     Insider Transactions**

8           15.     From May of 2007 through February of 2008, Adkison paid several million  
9 dollars to Hidden City Games and Off The Grid, and/or allowed Hidden City Games and Off The  
10 Grid to setoff several million dollars while Make A Wish and other non-insider creditors were  
11 not paid. See Debtor's Statement of Financial Affairs' attached lists detailing transfers outside  
12 of the ordinary course of business, payments and setoffs to Insiders.

13           16.     Although not disclosed in the schedules initially filed by the Debtor, or in their  
14 proofs of claim, Adkison personally guaranteed the Jordan and Des Brisay loans to the Debtor.  
15 Jordan and Des Brisay are two of the three members of the Creditors Committee. See Debtor's  
16 Amended Schedules, Schedule "H" filed October 1, 2008 (Doc No. 90).

17           **D.     Lucas Suit**

18           17.     In early January of 2008, Lucas filed suit against the Debtor seeking recovery of  
19 \$500,000 plus payment of the Make A Wish debt. Although not disclosed in the Debtor's  
20 Schedules or Disclosure Statement, the Debtors asserted a counter claim against Lucas in the  
21 amount of \$77,289.50.

22           18.     In its Disclosure Statement, the Debtor indicated that the Lucas claim is the only  
23 claim which they dispute, although in their schedules, the Debtor listed \$284,099.32 of the Lucas  
24 claim as undisputed.

25           **E.     Bankruptcy Filing**

26           19.     On February 15, 2008 the Debtor filed the current Chapter 11 Bankruptcy.

20. In Schedule B, the Debtors failed to list ownership of 71,770 shares of Series A Preferred Stock of Hidden City Games. See Debtor's Schedules and Amended Schedules.

21. In Schedules E and F, the Debtor failed to list its obligations to the vendors and individuals who had pre-registered for its convention. As noted above, a significant amount of the Debtors' income is derived from the pre-payment of fees for attendance, playing in events and merchant booth space, which creates both an asset in the form of cash and a liability to the particular registered party. See Exhibit E to the Debtors' Disclosure Statement noting 2009 deposits as a liability.

22. In its answer to Question 3.C of the Statement of Financial Affairs ("SOFA"), Payments to Insiders within a year of Bankruptcy, the Debtor stated it had made the following payments to or on behalf of Insiders:

HIDDEN CITY	
GAMES <sup>3</sup> :	\$3,619,983.61
OFF THE GRID:	\$976,688.41

23. In its Answer to Question 10.a of the SOFA, Other Transfers outside the Ordinary Course of Business made within 2 years of the Bankruptcy, the Debtor stated that it had made the following payments to insiders:

HIDDEN CITY	
GAMES:	\$250,000.00
OFF THE GRID:	\$1,187,994.67

24. In its answer to Question 13 of the SOFA, Setoff, the Debtor stated that it had allowed (as Adkison controlled both companies) the following setoffs:

HIDDEN CITY	
GAMES:	\$3,722,160.91
OFF THE GRID:	\$107,024.65

<sup>3</sup> The Debtor, per Adkison, also stated it owed no further amounts to Hidden City Games which directly contradicts the Debtor's Schedule F and Hidden City Games's Proof of Claim.

25. In its Answer to Question 23 of the SOFA, withdrawals from a partnership or distributions by a corporation, the Debtor stated that it had made the following distributions to its owner and officers:

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Peter Adkison 120 Lakeside Ave #100 Seattle, WA 98126 Owner	2/07 through 11/07 Owner's draw	\$127,109.21
Peter Adkison & Off the Grid *Infusion of loan proceeds to Gen Con to pay bank line of credit	4/07	-\$500,000
Peter Adkison & Off the Grid *funded by Adkison mortgage on residence	4/07	\$745,000
Peter Adkison & Off the Grid *Transfer mortgage obligation and Note Payable from Gen Con, LLC to Off the Grid and cancellation of Off the Grid debt	11/07	\$1,187,994.67
Adrian Swartout 4403 – 51st AVE S Seattle, WA 98118 President	2/15/07 through 2/15/08 for wages (net)	\$74,373.52
Ann Eutsler 3520 Olympic BLVD W Tacoma, WA 98466 CFO	2/15/07 through 2/15/97 for wages (net)	\$85,290.25

It appears that the distributions to Adkison and Off The Grid are duplicative of those listed in questions 3c, 10a and 13 of the SOFA.

26. The Debtor's Amended Plan, is designed to, immediately on confirmation, release the Insider Defendants from approximately \$10,000,000 of avoidance actions which are

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1 admitted, under oath by Adkison, CEO of Hidden City Games, owner of Off The Grid and  
2 individual defendant.

3 27. Section 12.3 of the "Miscellaneous Provisions" article of the Plan provides "Upon  
4 confirmation, the Debtor will waive all avoidance actions" which is defined in Section 1.5 of the  
5 Plan as "any and all claims and causes of actions arising under the Bankruptcy Code, including  
6 without limitation, Sections 544, 545, 547, 548, 549 and 550."

7 28. As these waiver provisions include a waiver of 11 U.S.C. §549 actions, it will  
8 effectively preclude any investigation of the Debtor, its principals' and processional's' actions in  
9 this case.

10 29. In return for this immediate release, the sole consideration given by Adkison and  
11 Hidden City Games is their agreement to subordinate their claims, totaling approximately  
12 \$430,000, to the payment of other unsecured claims.

13 30. Further, there are no payments guaranteed to unsecured creditors except for  
14 payments from current cash on hand, which shall be used to pay administrative and priority  
15 claims. See Amended Plan, Section 10.4.1.

16 31. Section 10.1.3 of the Plan which governs payments to Class 3 unsecured  
17 creditors, provides:

18 Class 3 Claims: The Reorganized Debtor shall disburse \$364,000.00  
19 every six (6) months starting April 1, 2009, with a final disbursement sufficient to  
20 pay the remaining balance of all Allowed Class 3 Claims in full with interest as  
21 called for in the Plan on or before October 1, 2012. Payments shall be applied  
22 first to accrued interest, and next to reduce the principal balance of the Allowed  
23 Class 3 Claim. If the Reorganized Debtor has insufficient funds on hand to make  
24 a scheduled payment, the disbursement amount may be reduced, and the  
deficiency will be paid at the next payment date to the extent funds are available  
or added to the October 1, 2012, payment; provided however, that in the event the  
Reorganized Debtor has insufficient funds available to make final payment on  
October 1, 2012, additional payment may be made on April 1 and October 1,  
2013 as necessary to complete the Plan.

25 The Class 3 Claims may be paid in full at any time with no prepayment  
26 penalty. Moreover, the Reorganized Debtor may, subject to the approval of the  
Advisory Committee, propose to make a cash out payment to the Class 3 Claims  
at a discounted rate, provided any such discounted early payment proposal is

made to all members of Class 3. The Reorganized Debtor may seek to reach agreement with individual Class 3 creditors and need not obtain approval of all Class 3 Creditors in order to distribute a discounted cash out payment to those Class 3 Creditors electing to receive such payment in full satisfaction of their Allowed Claims, and shall continue to pay any Class 3 Creditor in accordance with this Plan should they not elect a cash out.

32. This provision, however, allows the Debtor to not make the biannual \$364,000.00 payments if the Debtor has “insufficient funds on hand.” Further in contradiction to Section 6.1 of the Plan, Section 10.1.3 only requires payments to be made by the Debtor through October 1, 2013.

33. The Plan also benefits its Insiders by assuming and assigning a real estate and computer lease to Hidden City Games. As one of the Debtor’s most valuable assets is its computer programs and customer lists, assigning its computers to a third party greatly harms the Debtor. This will also give Insiders the chance to “reincarnate” the Debtor should its Plan collapse, as they may have sole control of many of the Debtor’s most valuable assets. (Section 9.2 and 9.3 of the Plan.

34. Finally, the Debtor’s Plan fails to provide a meaningful default provision, as Article 14 of the Plan hinders creditors by requiring 30 day written notice of a default and providing no remedies, other than their basic contractual rights, if a default is in fact declared.

#### **F. Acquisition Plan**

35. In contrast to the hope and prayer Plan of the Debtor, Acquisitions offer:

- Guarantees, by funds deposited by Acquisition in the undersigned’s Escrow Account, of the payment in full of all allowed administrative expenses and priority claims (see attached Exhibit A);
- Guarantees, by funds deposited by Acquisition in the undersigned’s Escrow Account, the holders of all allowed unsecured claims the option of either an **immediate guaranteed payment of 70% of their claims** or a partially guaranteed payment, over time, of 100% of their claims plus interest (see attached Exhibit A);

- 1 • Provides for the retention of all operation capital currently in the Debtor to ensure
- 2 funding of the future operations and conventions (see attached Exhibit A);
- 3 • Preserves of all of the Debtor's claims and causes of action ("Debtor Claims") against
- 4 insiders and or associates and affiliates of insiders ("Insider Defendants") to further ensure
- 5 payment of creditors' claims; and
- 6 • Waives Debtor Claims against third party trade vendors and other third party
- 7 unsecured creditors who are not Insider Defendants.

8 36. It is therefore clear that Acquisitions offer is financially superior, as it guarantees  
9 payments to creditors and provides the Debtor with the amount of operating capital to run its  
10 conventions and operate its business.

## 11 **II. LEGAL ARGUMENT**

### 12 **A. The Debtor's Plan is Not Proposed in Good Faith in Violation of 11 U.S.C.** 13 **§1129**

14 37. As noted in the factual background above, in order for a plan to be proposed in  
15 good faith, it must be designed to facilitate the purposes of the Bankruptcy Code which include  
16 the successful rehabilitation of debtor and "maximizing the value of the bankruptcy estate." In re  
17 General Teamsters, 265 F.3d at 877; In re Pacific Gas and Electric Company, 304 B.R. at 404.  
18 Here, the Plan does not facilitate the legislative purpose of the Bankruptcy Code, but instead  
19 serves as a disguise for a valueless settlement with the Debtor's Insiders.

#### 20 i) Plan Releases Insiders for No or Insufficient Value

21 38. Initially, it is beyond dispute that primary beneficiaries under the Plan are  
22 Adkison, Hidden City GameS and Off The Grid, as they receive immediate releases of the  
23 Debtor's Claims against them while providing, at best, a possible payment to creditors.

24 39. It is well settled that plans which are based on insider interests are proposed in  
25 bad faith. See In re Coram Healthcare Corp., 271 B.R. 228 (Bkrtcy D. Del. 2001); Matter of  
26 Fiesta Homes of Georgia, Inc., 125 B.R. 321, 325 (Bkrtcy. S.D. Ga. 1990) (Debtors could not

1 confirm any Chapter 11 plan where significant portion of plan funding would have to come from  
2 insider preferences).

3 40. As this Debtor has at least \$10,000,000 of potential claims against its primary  
4 owners, Adkison and his former spouse, as well as two closely related entities and the Plan  
5 proposes to release them for a subordination of perhaps \$430,000 in unsecured claims, the Plan  
6 is clearly proposed in bad faith and not confirmable.

7 ii) Plan Does Not Require Payments to Creditors

8 41. Under the specific language of the Plan, as discussed in detail above, the Debtor  
9 can always defer payments to unsecured creditors if they lack sufficient funds. A plan which  
10 permits unlimited delays in payment (which could end in October of 2013 with no additional  
11 payments), is not in the best interests of creditors. The Plan also violates 11 U.S.C. §1129(a)(1)  
12 by not fairly treating creditors. See generally In re Harman, 141 B.R. 878 (Bkrtcy E.D. Pa.  
13 1992) (Debtor's failure to provide payment except over 30 years or at 25% of their allowed  
14 amount filed in bad faith where no restrictions on debtor's expenditures).

15 iii) The Debtor has Assigned a Lease of its Computers to HIDDEN CITY  
16 GAMES without Explanation or Consideration

17 42. In their Schedules, the Debtor lists only \$31,841.78 in "office" equipment.  
18 Therefore, the Dell computers being assigned to Hidden City Games apparently are the bulk of,  
19 it not the only, computers in the Debtor's possession. Debtor's Schedule B at question 28.

20 43. However, the Debtor lists in its Schedules and Monthly Financial Statements  
21 computer software with a value over \$1,000,000, at cost, and \$152,078.06 at depreciated value.  
22 This software is important to the Debtor's conventions, as it, among other things, allows the  
23 convenient registration and scheduling of events.

24 44. While the Debtor's Disclosure Statement notes the Dell Computer lease will be  
25 assumed, it fails to note that a certain lease and the underlying computers will be assigned to  
26

1 Hidden City Games. Indeed, the initial Plan, as opposed to the Amended Plan, also does not call  
2 for the assignment of the computers to Hidden City Games. See Exhibit 2 to the Amended Plan.

3 45. Although the exact import of this assignment is unclear, in the event the Plan fails  
4 and the computers assigned to HIDDEN CITY GAMES contain the Debtor's software, Hidden  
5 City Games will potentially, if not legally, be in the best position to resurrect Gen Con as an  
6 event.

7 46. Therefore, the assignment of the computer lease also appears to be in bad faith  
8 and renders the Plan unconfirmable.

9 iv) There are No Effective Default Provisions to Ensure Debtor's  
10 Performance Under the Plan

11 47. The Plan also violates the good faith requirements of 11 U.S.C. 1129(a)(3) due to  
12 the lack of any effective default provisions.

13 48. Article 14 of the Plan, which is titled "Events of Default", provides no standard or  
14 definition of what constitutes an event of default under the Plan and, in fact, limits creditors'  
15 rights by requiring written notice and a 30 day cure period.

16 49. The Advisory Board, controlled by close associates of Adkison, whose debts are  
17 guaranteed by Adkison, have no real powers other than the right to consult concerning the  
18 Debtor's operations and to veto certain "Major Decisions".

19 50. In light of this, it is clear there is no effective way for either a default to be  
20 declared, or creditors to recover on their claims after such a default under the Plan. Therefore,  
21 the Plan is not proposed in good faith as required by In re General Teamsters, 265 F.3d at 869.

22 v) The Debtor's Pre and Post Petition Refusal to Turn Over Auction  
23 Proceeds to Make-A-Wish Demonstrates the Plan was Filed in Bad Faith.

24 51. One of the key underlying causes of the Debtor's bankruptcy was its  
25 management's refusal to turn over property, **in which the Debtor's have no interest**, to Make-  
26 A-Wish to use in its mission to fulfill the wishes of children facing life threatening medical  
conditions.

OBJECTION TO CONFIRMATION – 12

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1           52.     Acquisition is not sure whether Debtor's management simply preferred to pay  
2 money to insiders (see paragraphs 10-15 above) or used the Make-A-Wish Auction proceeds as a  
3 "bargaining chip" against Lucas. However, either course of action reflects, at best, an extremely  
4 poor business and moral decision on the Debtor's part and, at worst, cold bloodiness which  
5 Scrooge, before he was visited by the 3 Ghosts, would find reprehensible.

6           53.     Further, the Debtor took no post petition steps to turn over the Auction Proceeds  
7 to Make-A-Wish until this Court ordered the turnover in November of this year, nearly a year  
8 and a half after the proceed should have been turned over.

9           54.     The majority of courts have held that prefiling conduct of a Debtor can be  
10 considered in determining whether a plan was filed in good faith. See In re Georgetown Ltd.  
11 Partnership, 209 B.R. 763 (Bkrcty M.D. Ga. 1997); In re SM 104 Ltd., 160 B.R. 202 (Bkrcty  
12 S.D. Fla. 1993). Further, it is clear a debtor's conduct post petition in proposing a plan can be  
13 considered in determining a debtor's good faith.

14           55.     Here, refusing to turn over approximately \$150,000 to Make-A Wish, which was  
15 proceeds from the auction of Lucas's property proves a total lack of food faith on the part of the  
16 Debtor.

17                   vi)   The Debtor has Acted in Bad Faith in Failing to Consider Acquisition's  
18                       Offer

19           56.     Finally, as noted above, Debtor has a duty to maximize the value of its estate. See  
20 Commodity Futures Trading Commission, 471 U.S. 343, 352 (1985) (duty of debtor to maximize  
21 the value of the estate); In re General Teamsters, etc., 265 F.3d 869, 877 (9th Cir. 2001)  
22 (maximizing the value of the bankruptcy estate is a central purpose of the Bankruptcy Code); In  
23 re Pacific Gas and Electric Company, 304 B.R. 395, 404 (Bkrcty. N.D. Cal. 2004) (same).

24           57.     Here, as noted above, the Debtor has ignored an offer which has guaranteed  
25 payments, superior options for creditors and provides better funding for the Debtor's operations  
26

1 going forward. In light of the unilateral and unexplained rejection of Acquisition's offers, the  
2 Debtor's Plan should not be confirmed as it violates 11 U.S.C. §1129(a)(3).

3 **B. The Hiddent Settlement in the Debtor's Plan Fails to Meet the Requirements**  
4 **of 11 U.S.C. §§ 1123(b), 1129(a)(1) and Bankruptcy Rule of Procedure 9019.**

5 58. Although almost totally ignored by the Debtor in its Disclosure Statement and  
6 Plan, the core of the Debtor's Plan is the waiver of at least \$10,000,000 of avoidance actions and  
7 possibly other claims against Adkison, Hidden City Games and Off The Grid, as set forth in the  
8 Debtor's Schedules which were signed by Adkison on behalf of the Debtor.

9 59. Section 12.3's waiver also forecloses all but a criminal investigation of any post-  
10 petition actions by the Debtor, its managers and professionals, as 11 U.S.C. § 549 actions are  
11 waived.

12 60. Here, the sole "consideration" for the waiver of these claims is the voluntary  
13 subordination of approximately \$430,000 in claims by Hidden City Games and Adkison to other  
14 unsecured claims. Off The Grid is obtaining its release for no consideration.

15 61. Under 1123(b)(3)(A), a debtor may settle or adjust a claim, but such a settlement  
16 must be approved under the traditional fair and equitable standards of 9019. See In re New  
17 Century TRS Holdings, Inc., 390 B.R. 140, 167 (Bkrtcy D. Del. 2008).

18 62. This insignificant consideration clearly does not meet the test of approval of 9019  
19 settlements set forth by the Ninth Circuit in In re A&C Properties, 784 F.2d 1377, 1380-81  
20 (9<sup>th</sup> Cir. 1986).

21 63. Here, even if a 20% overall chance of success on the various transfers is assumed  
22 on claims which are essentially admitted by Adkison, Hidden City Games and Off The Grid as  
23 being voidable, the estate would realize approximately \$1,000,000.00. None of the remaining  
24 factors of the A&C Properties' test reduce the value of this settlement to a point where  
25 subordination of claims proposed in the Plan in any amount would be of any value, especially  
26 given the amount of the claims released.

64. Therefore, as the provisions of Section 12.3 of the Plan cannot be approved, the Plan's confirmation must be denied.

**C. The Plan Fails to Meet the Liquidation Test**

65. The Plan also fails to meet the liquidation test in 2 major respects.

66. In the liquidation analysis, the Debtor's place no value on its software programs used to run its conventions, its Hidden City Games stock and most importantly, the Debtor's claims. The failure to correctly value these assets totally destroy the liquidation analysis.

67. The Debtor has also totally ignored Acquisition's offer which would result, in the simplest case, in an immediate payment of 70% to all creditors in calculating the liquidation test.

68. Further, the Debtor totally failed to place any present value on the irregular stream of payments which the Plan could provide in the future. AS noted in the feasibility analysis, the Debtor projected net income prior to payment of the \$344,000 biannual payments is far less than the Plan payments until 2011. See Disclosure Statement Exhibit C.

69. Without going through an exact analysis of the present value of the payments under the Plan, it is clear that the Debtor has failed to meet a requirement of confirmation by not demonstrating that its Plan, which claims to pay 100% with interest, meets the liquidation test when true values for both the Debtor's assets and the proposed stream of payments is in serious doubt or totally missing. See In re Walker, 165 B.R. 994 (Bkrtcy E.D. Va. 1994) (Debtor's highly speculative plan with no guaranteed payments which proposed 100% payment on claims with 7% interest unconfirmable).

**D. The Plan is Not Feasible Under 11 U.S.C. §1129(a)(11)**

70. Finally, assuming the Debtor's Plan actually would require annual payments of \$724,000 to unsecured creditors, even the Debtor's overly optimistic projections of net income in Exhibit C of their Disclosure Statement does not meet those payment requirements until 2011.

71. The projections show almost no increase in expenses and significant increases in revenue with no explanation. Further, the payments leave almost no capital for operations of the

1 business. Therefore, the Debtor cannot demonstrate that there is a reasonable prospect for  
2 success of its Plan, especially when it abandons one of its most valuable assets, its claims against  
3 insiders and the Plan is not confirmable. See generally In Re Ridgewood Apartments of Dekalb  
4 County Ltd., 183 B.R. 784 (Purpose of Chapter 11 feasibility requirement is to prevent  
5 confirmation of visionary schemes).

### 6 CONCLUSION

7 72. Gen Con, the convention is a vital part of the hobby gaming industry. It serves  
8 hundreds of small businesses by providing them with a critical place to market their products as  
9 well as provides inexpensive entertainment to tens of thousands of people. It has, however,  
10 fallen on hard times, due not to the lack of dedication on the part of its volunteers and most of its  
11 employees, or lack of interest by vendors or attendees. Rather, its problem arises from decisions  
12 by certain members of management to pay insiders and not vendors or charities – such as Make-  
13 A-Wish.

14 73. The Debtor's Plan fails financially to address Gen Con's problems because it  
15 provides no capital. The Plan fails legally and morally because it allows insiders to retain their  
16 improper gains while offering no guaranteed payments to creditors. The Debtor also acts in bad  
17 faith by failing to even consider Acquisition's guaranteed offer.

18 Wherefore, for these reasons, Acquisition requests that this Court deny confirmation of  
19 the Debtor's Plan, order Debtor's counsel and management to submit a new Plan incorporating  
20 the terms of Acquisition LOI and grant such further relief as is appropriate under the  
21 circumstances.

22 DATED this 30<sup>th</sup> day of December, 2008.

23 FOSTER PEPPER PLLC

24 *s/ Dillon E. Jackson*

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Dillon E. Jackson, WSBA #1539

26 and

1 GREENEBAUM DOLL & MCDONALD PLLC

2 *s/ Claude R. Bowles, Jr*

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4 Claude R. Bowles, Jr, Pending Pro Hac Vice

5 Attorneys for Gen Con Acquisition LLC  
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OBJECTION TO CONFIRMATION – 17

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